

JOSEPH W. COTCHETT (36324)  
[jcotchett@cpmlegal.com](mailto:jcotchett@cpmlegal.com)  
STEVEN N. WILLIAMS (175489)  
[swilliams@cpmelgal.com](mailto:swilliams@cpmelgal.com)  
MATTHEW K. EDLING (250940)  
[medling@cpmlegal.com](mailto:medling@cpmlegal.com)  
COTCHETT, PITRE & McCARTHY  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577

*Attorneys for Plaintiff*

LISA I. CARTEEN, Bar No. 204764  
[lcarteen@bakerlaw.com](mailto:lcarteen@bakerlaw.com)  
BAKER & HOSTETLER LLP  
12100 Wilshire Boulevard, 15th Floor  
Los Angeles, California 90025-7120  
Telephone: 310.820.8800  
Facsimile: 310.820.8859

BRUCE O. BAUMGARTNER, Bar No. 0025701  
(*Pro Hac Vice*)  
[bbaumgartner@bakerlaw.com](mailto:bbaumgartner@bakerlaw.com)  
ROBIN E. HARVEY, Bar No. 0014183  
(*Pro Hac Vice*)  
[rharvey@bakerlaw.com](mailto:rharvey@bakerlaw.com)  
BAKER & HOSTETLER LLP  
312 Walnut Street, Suite 3200  
Cincinnati, Ohio 45202-4072  
Telephone: 513.929.3400  
Facsimile: 513.929.0303

*Attorneys for Defendants*  
GANZ, INC. and GANZ U.S.A., LLC

LEE H. SIMOWITZ, Bar No. 185728  
(*Pro Hac Vice*)  
[lsimowitz@bakerlaw.com](mailto:lsimowitz@bakerlaw.com)  
BAKER & HOSTETLER LLP  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036-5304  
Telephone: 202.861.1500  
Facsimile: 202.861.1783

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NUTS FOR CANDY, a Sole  
Proprietorship, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

GANZ, INC. and GANZ U.S.A., LLC,

Defendants.

Case No. CV 08-2873 JSW

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: September 12, 2008  
Time: 1:30 p.m.  
Judge: Hon. Jeffrey S. White  
Courtroom: Courtroom 2, 17<sup>th</sup> Floor

1 In accordance with the Federal Rules of Civil Procedure, the Civil Local Rules of the  
2 Northern District, and the Court's Standing Orders, the parties hereby submit this Joint Case  
3 Management Conference Statement in advance of the Case Management Conference scheduled  
4 for September 12, 2008 at 1:30 p.m.

5 1. **Jurisdiction:** Plaintiff's complaint in this action is filed under Section 1 of the  
6 Sherman Act, 15 U.S.C. § 1 and Section 3 of the Clayton Act, 15 U.S.C. § 14. Plaintiff contends  
7 that this Court has jurisdiction over the subject matter of this dispute under 28 U.S.C. §§ 1331,  
8 1337 and 2201, as well as 28 U.S.C. § 1332.

9 2. **Service:** All defendants in this action have been served.

10 3. **Facts:** Plaintiff alleges that Defendants' co-ordering requirement, which  
11 conditions the purchase of the Webkinz toy (the "tying" product") on the purchase of products  
12 from Ganz's "core line" (the "tied Ganz products") constitutes a per se violation of Section 1 of  
13 the Sherman Act and Section 3 of the Clayton Act. Plaintiff sues to recover damages allegedly  
14 caused by Defendants' illegal tying arrangement.

15 Defendants state that their policies do not constitute an unlawful tying arrangement  
16 because they have no market power in the Webkinz toy alleged to constitute the tying product,  
17 and that the alleged tying product does not occupy a valid relevant product market for antitrust  
18 purposes. In addition, Defendants state that Plaintiff has failed to allege an anticompetitive effect  
19 in a relevant tied product market, which cannot consist of Ganz's "core line," i.e., whatever Ganz  
20 sells that is not Webkinz.

21 4. **Legal Issues:**

22 4a. **Plaintiff's Statement:** Plaintiff respectfully suggests that the legal issues  
23 include, but are not limited to:

- 24 i. The definition of the relevant product market for Webkinz;  
25 ii. Whether Ganz implemented an unlawful and illegal tying  
26 arrangement that conditioned retailers' purchases of Webkinz on  
27 their purchase of the tied Ganz products in the United States in  
28

violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

iii. Whether the alleged tying had an anticompetitive effect in a tied product market; and

iv. Whether plaintiff and the other members of the Class were injured by reason of Ganz's unlawful conduct; and, if so, the appropriate class-wide measure of damages.

4b. **Defendants' Statement:** In addition to the above, Defendants respectfully suggest that additional legal issues included, but are not limited to:

i. Whether the Defendants have market power in a valid relevant product market for the alleged tying product (Webkinz toys);

ii. The existence and definition of a relevant product market for the allegedly tied products (Ganz "core" products);

iii. Whether Ganz's actions have injured competition, rather than at most, as alleged in the complaint, merely the Plaintiff as an individual competitor; and

iv. Whether the proposed class may be certified under Fed.R.Civ.P. 23.

Additional or different legal issues may be presented by Plaintiff's amended complaint when it is filed on September 10, 2008.

## 5. **Threshold Motions:**

5a. **Plaintiff's Statement:** Plaintiff filed its Motion for Appointment of Interim Lead Counsel on July 18, 2008. The motion is fully briefed by all parties. On August 5, 2008, the Court entered an Order Setting Briefing Schedule on Defendants' Motion to Dismiss filed August 4. On August 19, 2008, a Clerk's Notice was entered continuing the hearing date on Defendants' motion to dismiss and Plaintiff's Motion for Appointment of Interim Lead Counsel to November 14, 2008, at 9:00 a.m. On August 26, 2008, the parties submitted a Stipulation and [Proposed] Order

1 notifying the Court of Plaintiff's intention to file an amended complaint on  
2 or before September 10, 2008, and Defendants to answer, move, or  
3 otherwise respond to the amended complaint on or before October 10,  
4 2008. The Court entered this order on August 28, 2008.

5 5b. **Defendants' Statement:** On August 4, 2008, Defendants moved to  
6 dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6). Rather than  
7 oppose that motion, Plaintiff stated that it intends to file an amended  
8 complaint by September 10, and stipulated that Defendants may respond to  
9 the amended complaint by October 10. Defendants will evaluate the  
10 amended complaint after it is filed, and determine whether to renew their  
11 motion to dismiss. If Defendants file such a motion, they anticipate that it  
12 could be argued on November 14, which was the date originally set for  
13 argument on Defendants' motion to dismiss the original complaint.

14 6. **Evidence Preservation:** The parties are taking reasonable steps to ensure that  
15 evidence is preserved. Plaintiffs and Defendants have met and conferred with respect to the  
16 matters set forth in Fed. R. Civ. P. 26(f).

17 7. **Disclosures:** Plaintiff and Defendants are prepared to make Rule 26 Disclosures  
18 and move forward with discovery on a schedule agreed to by the parties or ordered by the Court.

19 8. **Discovery:**

20 8a. **Plaintiff's Statement:** Plaintiff anticipates serving discovery and does not  
21 believe that discovery or a discovery plan should be delayed. Plaintiff  
22 believes that the Federal Rules of Civil Procedure and the Local Civil  
23 Rules of the Northern District should govern.

24 8b. **Defendants' Statement:** Defendants anticipate serving discovery, but  
25 believe that discovery should be stayed until after a decision on any motion  
26 that they may file to dismiss the amended complaint. For the same reason,  
27 Defendants believe that it is premature at this time to submit a discovery  
28 plan. Defendants expect to require discovery from Plaintiff with regard to

1 at least the following subjects: (1) under Fed.R.Civ.P. 23(a), the typicality  
2 of Plaintiff's claims with regard to the proposed class, and Plaintiff's  
3 ability to fairly and adequately protect the interests of the class; (2) the  
4 impact, if any, of Defendants' alleged actions on Plaintiff; and (3) the  
5 damages, if any, incurred by Plaintiff.

6 9. **Class Actions:** Plaintiff anticipates filing a Motion for Class Certification, which  
7 Defendants anticipate opposing.

8 10. **Related Cases:** On July 11, 2008 a lawsuit was filed in Massachusetts District  
9 Court, *Cortes Country Stores, Inc. v. Ganz, Inc. et al.*, 2008 cv 11184. A third action, *Comstock*  
10 *et al v. Ganz, Inc. et al.*, (No. CV 08-04167), was filed in the Northern District of Illinois, on  
11 July 22, 2008. Plaintiff Nuts For Candy filed a motion with the Judicial Panel on Multidistrict  
12 Litigation ("JPML") for transfer and consolidation of these related actions to the Northern District  
13 of California pursuant to 28 U.S.C. § 1407 for coordinated or consolidated pretrial proceedings.  
14 Defendants' response to the JPML supports transfer and consolidation of these actions to the  
15 Northern District of California. On July 30, 2008, the JPML established MDL No. 1987 for this  
16 motion. The motion is fully briefed and to be heard by the JPML on September 25, 2008.

17 11. **Relief:** Plaintiff seeks money damages, including treble damages for violations of  
18 the federal antitrust laws, and injunctive relief against continued practices. Plaintiff also seeks its  
19 attorneys' fees and costs pursuant to law. Defendants deny that Plaintiff is entitled to any relief.  
20 Because Plaintiff has not described any methodology for calculating damages, Defendants are not  
21 able to respond at this time with regard to how damages should be calculated if liability is  
22 established.

23 12. **Settlement and ADR:** The parties and their clients have read and reviewed the  
24 handbook entitled "Dispute Resolution Procedures in the Northern District of California," and  
25 have filed their ADR certifications. The parties have met and conferred and agree to private ADR  
26 under ADR Local Rule 3-4. As of this date, the parties have not selected a mediator. The parties  
27 have filed a stipulation to this effect.  
28

13. **Other References:** As noted, this case has been referred to the Judicial Panel on Multidistrict Litigation.

14. **Expedited Schedule:** The parties do not believe that this case can be handled on an expedited basis with streamlined procedures.

15. **Scheduling:**

15a. **Plaintiff's Statement:** Answers or responses were filed on August 4, 2008. While a comprehensive schedule may be premature pending the determination of the motion before the JPML, Plaintiff believes that a schedule which would provide for class certification within six months of a decision by the JPML and a trial date one year thereafter would be appropriate.

15b. **Defendants' Statement:** Defendants believe that a comprehensive schedule may be premature prior to the filing of and decision on any motion to dismiss that may be filed in response to the amended complaint.

16. **Trial and Narrowing of Issues:** Plaintiff has demanded trial by jury. The parties are not presently in a position to address whether: (a) it is feasible or desirable to bifurcate issues for trial; (b) to estimate the anticipated length of trial; or (c) it is possible to reduce the length of the trial by stipulation, use of summaries of other expedited means of presenting evidence.

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17. **Disclosure of Non-Party Interested Entities or Persons:** All parties have filed their "Certification of Interested Entities or Persons" as required by Civil Local Rule 3-16.

Dated: September 5, 2008

By: /s/ Steven N. Williams  
STEVEN N. WILLIAMS  
([swilliams@cpmlegal.com](mailto:swilliams@cpmlegal.com)) (CA # 175489)  
COTCHETT, PITRE & McCARTHY  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
*Attorneys for Plaintiff*

Dated: September 5, 2008

By: /s/ Lisa I. Carteen (with permission)  
LISA I. CARTEEN  
([lcarteen@bakerlaw.com](mailto:lcarteen@bakerlaw.com)) (CA # 204764)  
BAKER & HOSTETLER LLP  
12100 Wilshire Blvd., 15th Floor  
Los Angeles, CA 90025-7120  
Telephone: (310) 820-8800  
*Attorneys for Defendants GANZ, INC. and GANZ U.S.A., LLC*

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